

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re

Chapter 7

MICHAEL R. MAEDER AND
KATHLEEN M. MAEDER

Case No.: 1-19-11086-MJK

Debtor.

Hon. Michael J. Kaplan

GREATER NIAGARA FRONTIER COUNCIL,
BOYS SCOUTS OF AMERICA
2860 GENESEE STREET
BUFFALO, NEW YORK 14225

A.P. No.: 19-01047-MJK

Plaintiff,

vs.

KATHLEEN M. MAEDER
59 A HINCHEY AVENUE
LANCASTER, NEW YORK 14086

Defendant.

MOTION FOR JUDGMENT BY DEFAULT

Plaintiff, Greater Niagara Frontier Council, Boy Scouts of America (the "Plaintiff"), by and through its Attorneys, Colligan Law, LLP, hereby moves for an order (1) declaring that the prior judgment of this Court rendered in Adversary Proceeding No 08-01076 is non-dischargeable under 11 U.S.C. §523(a)(4) in the Defendant's current Bankruptcy Case No 19-11086; (2) declaring the Judgment rendered by this Court in Adversary Proceeding No. 08-01076 remains fully enforceable to the extent permitted by law; and (3) granting the Plaintiff Judgment by default pursuant to Federal Rule of Bankruptcy Procedure 7055, and respectfully states as follows:

1. The Debtor, filed a voluntary petition under Chapter 7 on May 28, 2019 (the "Petition Date"), in the United States Bankruptcy Court for the Western District of New York, Bankruptcy Case No.19-11086.

2. On November 9, 2007 and prior to the Petition Date, the Debtor filed a voluntary petition under Chapter 7 in the United States Bankruptcy Court for the Western District of New York, Bankruptcy Case No. 07-04644.

3. On April 4, 2008, the Plaintiff brought an adversary proceeding against the Defendant objecting to the discharge of its debt in the amount of \$155,639.00 pursuant to 11 U.S.C. §524(a)(4), fraud, as fiduciary, embezzlement larceny in the United States Bankruptcy Court for the Western District of New York, A.P. No. 08-01076. (See attached Exhibit A – Adversary Proceeding Cover Sheet and Complaint).

4. On July 3, 2008, an order and judgment by default was entered in A.P. No. 08-01076, that, “pursuant to 11 U.S.C. §523(a)(4), the discharge under 11 U.S.C. §727 does not discharge Defendant Kathleen M. Maeder from her debt to the Plaintiff”. (See attached Exhibit B – Order and Judgment by Default).

5. There remains a balance due and owing on said Adversary Proceeding judgment in the sum of \$109,389.43. The obligation owed to the Plaintiff results from the fraud, or defalcation of the Defendant while acting in a fiduciary capacity, embezzlement or larceny.

6. The Plaintiff commenced this adversary proceeding by filing its Complaint on July 31, 2019.

7. On August 2, 2019, a copy of the Corporate Ownership Statement, Summons in Adversary Proceeding and Complaint was served on the Defendant and Defendant’s Bankruptcy Counsel, Barry H Sternberg, Esq. (See attached Exhibit C – Corporate Ownership Statement, Summons, Complaint and Certificate of Service).

8. The time to answer, plead or otherwise defend expired on September 2, 2019, said date being 30 days after service of the Summons. The Defendant has not filed an answer or any responsive pleadings to the Complaint.

9. Upon information and belief, the Defendant is not a member of the military service. On September 5, I requested that the Department of Defense Manpower Data Center

to be searched. The results indicated that the Defendant is not in the active duty of the United States military. (See attached Exhibit D – Affidavit of Non-Military Service).

10. The Plaintiff seeks a default judgment pursuant to Federal Rule of Bankruptcy Procedure 7055, incorporating Federal Rule of Civil Procedure 55.

11. Further, the Plaintiff requests the Court to enter a judgment by default confirming that the judgment determined to be non-dischargeable pursuant to 11 U.S.C. §523(a)(4) entered previously by this Court in Adversary Proceeding No 08-01076 is non-dischargeable for the same reason in the Defendant's current Bankruptcy Case No. 19-11086.

WHEREFORE, the Plaintiff requests an order (1) declaring the Judgment rendered by this Court in Adversary Proceeding No. 08-01076 as non-dischargeable pursuant to 11 U.S.C. §523(a)(4) is non-dischargeable in the Defendant's current Bankruptcy Case No. 19-11086 for the same reason; (2) declaring the Judgment rendered by this Court in Adversary Proceeding No. 08-01076 remains fully enforceable to the extent permitted by the law; (3) award the Plaintiff its costs and reasonable Attorneys' fees for prosecution of this Adversary Proceeding; and (4) grant the Plaintiff such other and further relief as the court might deem to be just and proper.

Dated : Buffalo, New York
September 6, 2019

COLLIGAN LAW, LLP

By: /s/ Frederick J. Gawronski

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